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SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1952

No. 398

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A.F.L.), ET AL.,

Petitioners,

vs.

COMMONWEALTH OF VIRGINIA, AT THE RELATION OF VIRGINIA FERRY CORP.

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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Petitioners,

vs.

COMMONWEALTH OF VIRGINIA, AT THE RELATION OF VIRGINIA FERRY CORP.

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered in the above-entitled case on June 16, 1952.

Opinions Below

The judgment order of the Court of Law and Chancery of the City of Norfolk (R. 8-9) is unreported.

The opinion of the Supreme Court of Appeals of Virginia (R. 79-90) is reported in 193 Va. 773, 71 S. E. (2d) 159.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia was entered on June 16, 1952 (R. 91). On September 8, 1952, Mr. Chief Justice Vinson extended the time for filing a petition for writ of certiorari to and including October 15, 1952 (R. 92). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Questions Presented

1. Whether the provisions of the Virginia Public Utilities Labor Act, which prohibit strikes by employees of public utilities unless and until certain notices have been given and until the expiration of a five-week period following the final notice, conflict with the Labor-Management Relations Act, 1947.

2. Whether, if such conflict is clearly established by recent and authoritative decisions of this Court,[1] the state courts of Virginia may avoid the effect of such decisions and vitiate the federally-protected right to strike, by the issuance of a *permanent* injunction enforcing the Virginia statute and the punishment by fines and imprisonment of those who exercise their right to strike in violation of that injunction.

3. Whether state *court* action—the issuance of an injunction and punishment for contempt for violation of said injunction—can accomplish results forbidden by federal law to the state *legislature* and the state *executive*.

4. Whether the refusal of the court below to consider the validity of the Virginia Public Utilities Labor Act and the injunction issued thereunder on the appeal from a conviction of contempt for violating the injunction con-

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[1] *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383; *Automobile Workers* v. *O'Brien*, 339 U.S. 454.

stitutes an adequate non-federal ground of decision and deprives this Court of jurisdiction to decide the important constitutional questions raised by petitioners.

Statute Involved

The statute of the State of Virginia, which petitioners contend is unconstitutional and invalid, is the Virginia Public Utilities Labor Act of 1947, Va. Code Ann. (1950), Title 40, § 75 et seq. In summary, the statute provides that strikes, lock-outs and work stoppages on public utilities shall be unlawful unless and until certain requirements laid down in the statute are fulfilled (§ 78). Whenever changes in wages or terms of employment are desired, the party requesting any such change must give notice to the opposing party and to the Governor and designate a time, not less than two nor more than sixty days thereafter, and a place for a conference with the opposing party (§ 78). In the event, after entering into negotiations in good faith, the parties are unable to agree, the Governor must be notified and another meeting must be held ten days from the time of adjournment of the first meeting (§ 78). The Governor may attend the second conference or send a representative or representatives to mediate the differences (§ 78). If at any time after the second meeting, one of the parties feels that further negotiations will be fruitless and is unwilling to continue the same, such party must notify the other party and the Governor to that effect (§ 78). Upon receipt of such a notice, the Governor shall request both parties to submit to arbitration (§ 78). If the parties are unwilling to arbitrate and one of them decides upon a work stoppage, he must fix the time for the beginning of the work stoppage, which must be not less than five weeks after the time of giving notice thereof.

and he must also immediately notify the Governor and the other party of such fact and of the time so fixed (§ 78).[2]

Violations of the statute are punishable by fine and by imprisonment up to twelve months (§ 91). In addition, civil penalties up to $10,000 per day may be assessed against labor organizations engaging in prohibited strikes (§ 92).

Statement

Petitioners are Local 333B, United Marine Division of International Longshoremen's Association (AFL), H. L. Everton, its President and W. L. Owens, its Secretary. The local union represents the employees of the Virginia Ferry Corporation (R. 79), which operates ferries in interstate commerce between Kiptopeke Beach and Little Creek, Virginia (R. 79).

On May 11th, representatives of the ferry corporation and of the local union met for the purpose of discussing their differences (R. 80). The union notified the corporation that it did not intend to comply with the Virginia Public Utilities Labor Act (R. 80). On May 17, 1951, the corporation filed its verified bill of complaint—a copy of which had been left at the office of the attorney for the union the evening before (R. 80)—in the Norfolk City Court reciting the union's intention not to comply with the Act and praying that the union and its officers be enjoined from calling a strike until it had complied with the provisions of the Virginia Public Utilities Labor Act (R. 15, 80). On the very same day, the court issued a *permanent* injunction prohibiting a strike "until proof is shown . . . either

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[2] In order to prevent any suspension of operations, the Governor is to utilize this five-week period to poll each employee as to his strike intention (§ 81) and to recruit and train the necessary replacements (§§ 82-83), so that he may seize and operate the utility at the end of this period (§79).

of compliance with the said Virginia Public Utilities Labor Act or of . . . intention to so comply therewith" (R. 15).

On May 31, 1951, the union removed the case to the United States District Court for the Eastern District of Virginia on the ground of the existence of a federal question (R. 2, 81).

On June 19, 1951, the union instituted a civil action in the United States District Court for the Eastern District of Virginia against John S. Battle, Governor of Virginia, to enjoin the Governor from enforcing the Virginia Public Utilities Labor Act, alleging, among other things, conflict with the Labor-Management Relations Act, 1947. See *Local 333B, United Marine Division* v. *Battle, Governor of Virginia,* 342 U. S. 880.

On June 22, 1951, the employees of the ferry corporation struck (R. 3, 81) without waiting for the five-week period required by the statute (R. 3), the union attorney taking the position that the state law was unconstitutional and that the federal court would so find (R. 44-45).

On June 23, 1951, the United States District Court remanded the cause to the Court of Law and Chancery of the City of Norfolk (R. 4-5).

On June 25, 1951, the Virginia Ferry Corporation requested the Norfolk City Court to issue an order to show cause why petitioners should not be punished for contempt (R. 2-4) and on the same day the order and rule to show cause issued (R. 5-6).

On June 27, 1951, the petitioners answered the motion for the show cause order and moved the court to vacate its injunction of May 17th (R. 7-8), contending that the order was null and void *ab initio* in seeking to compel compliance with a null and void, invalid and unconstitutional statute (R. 7). On the same day, and without notice to the counsel for petitioners (R. 14), an order was entered

transferring the case from the equity side of court to the law side and entitling it *Commonwealth . . .* v. *Local 333B, et al.* (R. 6-7).

On June 28, 1951, at the opening of the contempt hearing, counsel for the union again asked the court to vacate its order of May 17th on the ground that the order had no legal effect as being made pursuant to an unconstitutional statute (R. 11). The court, however, proceeded to try the contempt case and found the union and its officers guilty (R. 8-9). The court fined the union $7,500 (approximately twice its total assets (R. 73, 9)) and sentenced the two officers to 10- and 5-day jail sentences (R. 9), as well as fining them approximately two months' salary (R. 73, 74, 9).

On August 3, 1951, the three-judge United States District Court dismissed the complaint filed on June 19th on the ground that petitioners "have an altogether adequate remedy in the state courts." *Local 333B, United Marine Division* v. *Battle,* 101 F. Supp. 650, 652 (E. D. Va.). On November 26, 1951, this Court affirmed the judgment of the three-judge district court without argument or opinion. *Local 333B, United Marine Division* v. *Battle, Governor of Virginia,* 342 U. S. 880.

Meanwhile, petitioners appealed from the judgment of contempt entered in the Court of Law and Chancery of the City of Norfolk, assigning as error, among others, the failure of the court "to hold the injunctive order null and void *ab initio* as compelling compliance with null and void unconstitutional statute" (R. 10-11). On November 27, 1951, a writ of error and supersedeas was awarded petitioners (R. 1). On June 16, 1952, the Supreme Court of Appeals of Virginia affirmed the contempt conviction, without considering the validity of the Virginia statute or of the injunction, on the ground that where a court has jurisdiction of

the parties and the subject matter to pronounce a judgment, such judgment must be obeyed until reversed and cannot be attacked collaterally even if the statute upon which it is based is later declared to be unconstitutional (R. 87).[3]

Specifications of Errors to Be Urged

The Supreme Court of Appeals of Virginia erred:

(1) In failing to hold that the notice and waiting-period provisions of the Virginia Public Utilities Labor Act are unconstitutional and void as in conflict with the Labor-Management Relations Act, 1947.

(2) In failing to hold that the Labor-Management Relations Act, 1947, deprived the Virginia courts of jurisdiction to enjoin peaceful strikes in interstate industries.

(3) In holding that the validity of the Virginia statute and the injunction thereunder could not be raised upon appeal from the judgment of contempt for violating the injunction.

(4) In affirming the judgment and order of contempt.

The Writ Should Be Granted Because the Decision of the Supreme Court of Appeals of Virginia Denies Petitioners Their Rights Under Federal Law Without a Hearing and Conflicts With the Applicable Decisions of This Court.

(1) The decision of the Supreme Court of Appeals of Virginia boils down to this startling proposition: the injunction of a city court must be complied with as long as it

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[3] The court below suggested, although not relying upon the point, that petitioners had failed to move to vacate the injunction until they were before the court to answer the charge of criminal contempt (R. 87). This is incorrect. All apart from petitioners' efforts to have the issues determined in the more favorable atmosphere of the federal court first by removal (R. 2), and then by separate suit (*Local 333B, United Marine Division* v. *Battle, Governor of Virginia*, 342 U. S. 880), petitioners did move to vacate the injunction on June 27th (R. 7-8) and again on June 28th (R. 11), both prior to the trial for contempt.

is in effect even though it prohibits the exercise of the federally-protected right to strike and men may be fined and sent to jail for exercising those federally-protected rights without ever receiving a hearing on the existence of those rights.

(2) That petitioners did have such a federally-protected right to strike has been authoritatively declared by this Court and is no longer subject to question. *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383. Under these decisions, the right to strike is protected against efforts by a state to regulate (e. g., by notice and waiting-period requirements), or to prohibit, peaceful strikes in industries affecting commerce.

(3) Under the *O'Brien* and *Bus Employees* cases, it is clear that the notice and waiting-period provisions of the Virginia Public Utilities Labor Act conflict with the Labor Management Relations Act, 1947. Equally clear, state court action—by injunctive process or otherwise—cannot accomplish results forbidden to the state executive and the state legislature. *Shelley* v. *Kraemer*, 334 U. S. 1, 19-20; *W. U. Tel. Co.* v. *Massachusetts*, 125 U. S. 530. "The freedom from interference on the part of the States is not confined to a simple prohibition of laws impairing it, but extends to interference by any ultimate organ." *Kansas Southern Ry.* v. *Kaw Valley Dist.*, 233 U. S. 75, 78 (per Holmes, J.). The Virginia statute contained criminal sanctions and their attempted enforcement through prosecution would have given petitioners an opportunity to vindicate their federal rights. If, through the injunction-contempt route, state courts can prevent the assertion of the federally-protected right to strike, a new method has been found whereby state action can circumvent federal law.

(4) ". . . Congress has closed to state regulation the

field of peaceful strikes in industries affecting commerce." *Bus Employees* v. *Wisconsin Board,* 340 U. S. 383, 394. In so doing, it has deprived the state courts of jurisdiction over peaceful strikes (*W. U. Tel. Co.* v. *Massachusetts,* 125 U. S. 530; *Kansas Southern Ry.* v. *Kaw Valley Dist.,* 233 U. S. 75, 78; *Shelley* v. *Kraemer,* 334 U. S. 1, 19-20) and state court action is void and subject to collateral attack.[4] *Kalb* v. *Feuerstein,* 308 U. S. 433; *Vallely* v. *Northern Fire Ins. Co.,* 254 U. S. 348. Even the court below conceded that the validity of the injunction could have been raised in the contempt proceeding if the state courts had not had jurisdiction of the subject-matter (R. 87-88) and this, of course, is a well-settled rule of law. *Freeman on Judgments,* 5th Ed., §§ 325, 337 (1925). By refusing to consider the federal constitutional issues presented to it, the court below closed its eyes to the very issue of "jurisdiction-over-the-subject-matter," on which, even by its own reasoning, the case turned.

(5) This Court implicitly accepted the view that the unconstitutionality of a state anti-strike injunction may be raised in contempt proceedings in *United Gas, Coke & Chemical Workers* v. *Wisconsin Board,* 340 U. S. 383 (reversal of fines for contempt for striking in violation of a state court restraining order). It is true, of course, that the Wisconsin Supreme Court did not rely on the collateral-attack doctrine, as did the court below here, but this Court would have been obliged to avoid the delicate federal-state

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[4] Although unnecessary to petitioners' case, it can be persuasively argued that defending a contempt action on the ground that the injunction is invalid is a direct rather than a collateral attack upon the injunction, particularly where the same judge issues the injunctive and contempt orders. The mere changing of the judge's hat from law to equity cannot obscure the practicalities of the situation. See Swayzee, *Contempt In Labor Injunction Cases* (1935) 25, n. 3; *Collateral Attack Upon Labor Injunctions Issued In Disregard of Anti-Injunction Statutes,* 47 Yale L. J. 1136, 1141, n. 29 (1938).

constitutional issues on this very ground had it believed that the Wisconsin state court injunction was not subject to attack on appeal from a contempt conviction. See also *Thomas* v. *Collins*, 323 U. S. 516.

(6) Neither *Howat* v. *Kansas*, 258 U. S. 181, nor *United States* v. *Mine Workers*, 330 U. S. 258, support the decision of the lower court. In the *Howat* case, there was no federal law protecting the right to strike and thus affecting the jurisdiction of the state courts. In the *Mine Workers* case, the basic question before the Court was the "power to issue a restraining order for the purpose of preserving existing conditions *pending a decision upon its own jurisdiction*"[5] (p. 290) and a majority of the Court upheld this power in reliance upon *United States* v. *Shipp*, 203 U. S. 563. The *permanent* injunction issued by the Virginia court cannot be justified on any such ground.

(7) There is no non-federal question adequate to sustain the decision of the court below. The jurisdiction of the city court issuing the injunction depends upon the interpretation of a federal statute (Labor-Management Relations Act, 1947) and is thus a federal question. *Kalb* v. *Feuerstein*, 308 U. S. 433, 438. Indeed, the court below apparently concedes that if federal law deprived the state courts of jurisdiction of the subject-matter, the injunction was void and subject to collateral attack (R. 87).

(8) Furthermore, state courts cannot close the door to any consideration of a claim of denial of federal right. *Young* v. *Ragen*, 337 U. S. 235, 238. If petitioners are not able to raise their claim of federal right in this Court at this time, they will be fined and imprisoned without ever having been able to present to the courts the claim of federal right so clearly laid down by the decisions of this Court. Indeed, petitioners sought to raise their claim of federal right by

[5] Italics supplied.

an injunction action in the federal court, but were rebuffed on the ground that they had an adequate remedy in the state courts. See *Local 333B, United Marine Division* v. *Battle*, 101 F. Supp. 650, 652 (E. D. Va.), affirmed 342 U. S. 880. Now they are told that there is no effective state court remedy either.

(9) As in strike situations generally, time was of the essence. See Frankfurter and Greene, *The Labor Injunction* (1930), 78-80, 201. Petitioners chose to exercise their federal right to strike rather than yield that right in deference to an injunction which their attorney assured them was unlawful (R. 44-45). In so doing, they took the risk that the courts might later uphold the injunction against their claim of federal right. But, if the lower court decision goes unreversed, they will have lost their federal rights without ever a day in court.

Conclusion

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Petitioners

v.

COMMONWEALTH OF VIRGINIA, AT THE RELATION OF VIRGINIA FERRY CORPORATION,

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF OF RESPONDENT IN OPPOSITION

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Tr. refers to the original stenographic transcript of the testimony in the trial court.

R. refers to the printed record.

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LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A. F. L.) ET AL.,

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Respondent

On Petition for Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF OF RESPONDENT IN OPPOSITION

Respondent, Commonwealth of Virginia, respectfully opposes the issuance of a writ of certiorari to review the judgment of the Supreme Court of Appeals of Virginia entered in the above entitled case June 16, 1952.

I.

OPINIONS BELOW

The judgment order of the Court of Law and Chancery of the City of Norfolk (R. 8-9) is unreported. It appears in the opinion of the Supreme Court of Appeals of Virginia (R. 79-90).

The opinion of the Supreme Court of Appeals of Virginia (R. 79-90) is reported in 193 Va. 773, 71 S. E. (2d) 159.

II.

JURISDICTION

There is no jurisdiction in this Court under 28 U. S. C. 1257(3) because the validity of a state statute has not been drawn in question on the ground of repugnancy to the federal law.

In the lower courts the case turned solely on a non-federal ground of decision, to-wit, that where an injunction is issued by a court of general equity jurisdiction, requiring compliance with a state statute, and the injunction is violated, the violators cannot for the first time raise the question as to the claimed unconstitutionality of the statute in the contempt proceedings at law initiated for the purpose of punishing them; they must raise this question in the equity suit in which the injunction was issued (R. 86-87). They cannot test the law by disobedience. *Howat* v. *Kansas*, 258 U. S. 181. Even if any federal question be present, it is one explicitly foreclosed in the *Howat case*, and this is not sufficient to allow this Court to take jurisdiction. *Equitable Life Ass. Soc.* v. *Brown*, 187 U. S. 308, 311.

Petitioners have never in either the lower state court proceeding or in the state appellate court raised the precise question they now seem to rely upon. They now claim that the Court of Law and Chancery of the City of Norfolk had no jurisdiction whatsoever to enter the injunction order (Specification 2—p. 7 Peto.). In the lower courts they did not at any time question the jurisdiction of the state court issuing the injunction. They asserted in the contempt proceedings only that the Virginia Public Utilities Labor Act was unconstitutional (R. 7).

In the equity proceedings when the injunction was issued, petitioners' counsel on his own statement (made in the contempt proceedings) specifically disavowed any intention of relying on even the constitutional question (Tr. 23). In the

equity court he raised neither the constitutional nor the jurisdictional question (R. 86-87).

In the contempt proceedings petitioners filed an answer asserting that the injunction order was null and void because the statute was unconstitutional (R. 7). In the argument itself counsel for petitioners again claimed that the Virginia Public Utilities Labor Act was unconstitutional because of its conflict with the Federal law (R. 11-13; 60-61). We mention this even though this Court does not consider either oral arguments or briefs in determining whether a federal question is properly presented. *Live Oak Asso.* v. *Railroad Commission*, 269 U. S. 354. At no time either in pleadings or in argument, did petitioners question the jurisdiction of the Court of Law and Chancery of the City of Norfolk to issue the injunction.

In the Supreme Court of Appeals of Virginia, petitioners' two assignments of error which have any bearing on the point are as follows:

ASSIGNMENT No. 2

> "In failing to hold the injunctive order null and void ab initio *as compelling compliance with null and void unconstitutional statute.*" (Italics ours)

ASSIGNMENT No. 3

> "In that it was without jurisdiction to punish for contempt under Title 18 Sec. 255(5) Code 1950 unless injunctive order was lawful." (R. 10)

Neither of these assignments questions *the jurisdiction of the Court of Law and Chancery in awarding the injunction*. Nor does the use of the words "null and void ab initio" connote an objection to jurisdiction when used in conjunction with other words indicating that the injunction was null

and void because the statute was unconstitutional. Yet it is settled law in Virginia that only errors clearly set out in the assignments can be considered by the Virginia Supreme Court of Appeals (Rule of Court 5:1, par. 4; Burks Pleading and Practice 4th Ed. p. 817; *Dailey* v. *Rucker*, 151 Va. 72, 144 S. E. 466; Title 8 Sec. 474, Va. Code 1950).

Indeed, the assignments are further deficient for the reason that it must be made to appear that some provision of the federal law as distinguished from the state was relied upon; and this Court has held that if the claim is made merely that the statute is unconstitutional, with no reference to federal law, that it will be assumed that reference is being made to the state constitution rather than to the Federal constitution. *New York Central* v. *New York*, 186 U. S. 269, 273; *Bryant* v. *Zimmerman*, 278 U. S. 63, 67-68. *Oxley Stave Co.* v. *Butler*, 166 U. S. 648, 655.

Nowhere in the answer in the contempt proceedings or in the assignments of error in the state appellate court is there any reference to either the National Labor Relations Act, or the Labor Management Act of 1947 (R. 7, 10).

Nor did the Supreme Court of Appeals of Virginia consider, or pass upon any question which concerned the jurisdiction of the Court of Law and Chancery of the City of Norfolk (R. 79-90). That Court said:

> "Defendant's second contention is that the Virginia Public Utilities Labor Act is unconstitutional, and that the injunction order of May 17, 1951, based thereon, is null and void. (R. 86.)"

It was the failure of petitioners to raise the alleged unconstitutionality of the Virginia Act in the equity proceedings which was before the Virginia Court; not any claim of lack of jurisdiction of the court granting the injunction.

Under these circumstances, this Court will assume that the silence of the highest Virginia Court was due to the procedural deficiency (*Mutual Ins. Co.* v. *McGrew*, 188 U. S. 291, 309).

Petitioners have raised the question of the jurisdiction of the Court of Law and Chancery to award the injunction for the first time in their petition for certiorari.

This Court has held that the federal question must be raised in the trial court at the appropriate point under state procedure. *Hulbert* v. *Chicago*, 202 U. S. 275; *Brown* v. *Massachusetts*, 144 U. S. 573. If this is not done, this Court will decline jurisdiction.

In addition, the federal question must be pursued on appeal to the highest state court—and this must be done in a manner specified by the state rules of practice. *John* v. *Paullin*, 231 U. S. 583, 585; *CIO* v. *McAdory*, 325 U. S. 472, 477; *Parker* v. *Illinois*, 333 U. S. 571. The petitioners have not raised the question of jurisdiction at any time in the state courts.

It should be a sufficient showing that the language used by petitioners in the lower trial and appellate courts did not reveal that they were relying on any question of jurisdiction in that (1) the trial court understood counsel for the petitioners to be claiming that the Virginia Act was unconstitutional, and not that any question of jurisdiction had been raised (R. 61); (2) the appellate court had exactly the same understanding (R. 86); and at no time discussed in its opinion any *jurisdictional* question; and (3) that counsel for the ferry company had the same understanding, and argued the case on the question of failure to raise constitutionality alone.

III.

QUESTIONS PRESENTED

1. Whether when a state court of "general jurisdiction with equity powers" has granted an injunction against petitioners, to enforce a state statute, they raising no question in that court as to the constitutionality of the state statute, the state court on the law side in a proceeding to punish the petitioners for violating the court's injunction order, must consider the claimed unconstitutionality of the state statute (*Howat* v. *Kansas, supra*).

2. Whether the state court has the right to protect its dignity and the stability of its decrees by insisting that violators of its orders must adhere to state procedure in raising their defenses in the proper forum.

3. Whether the proper way for petitioners to test the constitutionality of the state Act is to disobey an injunction awarded to enforce it, or to raise the point in the equity court which granted the injunction, and in orderly fashion, except and appeal on an adverse decision.

4. Whether this court will consider a case where petitioners now rely on a claimed lack of *jurisdiction* of the state court which issued the injunction, although in the lower court upon trial of the contempt proceedings and in the state appellate court, they relied on a claimed *unconstitutionality* of the statute which the injunction enforced; and where petitioners failed to rely upon lack of *jurisdiction* in their assignments of error filed in the state appellate court, and the state practice did not allow the state appellate court to consider points not clearly set out in the assignments, and where the state appellate court did not consider the question of claimed lack of jurisdiction.

5. Whether this Court has the jurisdiction to consider

the question as to whether the National Labor Relations Act and/or the Labor Management Relations Act of 1947 has deprived a state court of jurisdiction to enjoin peaceful strikes in interstate commerce, where in neither of the lower courts was there any mention in the pleadings or assignments of error of either of the above mentioned Acts, nor of the violation of any other federal Act, and where the state practice does not allow the state appellate court to pass upon points not clearly set out in the assignments of error, and where also the highest state court has not passed on the question as to whether these Acts have deprived the state courts of jurisdiction.

6. Whether a state court of general jurisdiction with equity powers, including the power to issue injunctions in labor disputes, has by the National Labor Relations Act and the Labor Management Relations Act of 1947 been completely divested of jurisdiction to enforce any provision of a state Act regulating labor disputes.

IV.

STATUTE INVOLVED

The statute involved, and which petitioners claim to be unconstitutional and invalid is known as the Virginia Public Utilities Labor Act of 1947 (Code of Virginia (1950) Title 40—Sections 75-95).

V.

STATEMENT

On April 22, 1951, without any warning of any kind, and without compliance with any law, state or federal, the members of the union walked off the vessels of the Virginia Ferry Corporation. The walk-out lasted three hours (R. 80).

Representatives of the ferry corporation and the union met on May 11, 1951, and discussed the terms of a contract (R. 80). The union stated that it did not intend to obey the Virginia Public Utilities Labor Act (R. 80). On May 17, 1951, the respondent filed its sworn complaint in the Court of Law and Chancery of the City of Norfolk, a court of general equity jurisdiction, asking that an injunction issue requiring the union to obey the Virginia Act. A copy of this complaint had been left with the attorney for the union on the afternoon before the hearing, and both he and his clients were present in the courtroom when the hearing was held (R. 80).

The union opposed the injunction order on the ground only that the Virginia Ferry Corporation was not a utility under the terms of the Virginia Act. The union advanced no objection either to the constitutionality of the Virginia Act or to the jurisdiction of the Court of Law and Chancery of the City of Norfolk. The court issued the injunction order directing the union and its officers to comply with the provisions of the Virginia Act, and holding that the Virginia Ferry Corporation was a utility (R. 80-81).

On May 31, 1951, the union removed the equity injunction suit from the Court of Law and Chancery of the City of Norfolk to the United States District Court for the Eastern District of Virginia (R. 81). On June 25, 1951, the District Court, after hearing argument, remanded the cause to the state court because no federal question had been stated (R. 4).

On June 15, 1951, the attorney for the union wrote a letter to the Governor of Virginia, informing him that the union was proceeding in accordance with the Virginia Act; that conferences with the ferry company had been fruitless, and that the union would strike on July 27, 1951, a date within the time limit imposed by the Virginia Act (R. 81).

On June 22, 1951, without any notice to any one, and without any revocation of the statements made in their letter to the Governor, the union members went out on strike (R. 81).

On June 25, 1951, the ferry corporation filed a petition in the injunction suit to the effect that the union members had violated the injunction order, and praying that a rule be issued against them to show cause why they should not be punished for contempt (R. 81-82).

On June 27, 1951, the contempt proceedings were transferred from the equity suit in which the injunction had been granted, to the law side of the court, and the style of the case became "Commonwealth at the relation of Virginia Ferry Corporation, and Commonwealth of Virginia v. Local 333B, United Marine Division of International Longshoremen's Association, H. L. Everton and William L. Owens". The statement in the petition that the order making this transfer was entered without notice to counsel for petitioners is erroneous. The record reference (R. 14) relied upon by the petitioners shows in the words of their own counsel that the order was presented to him on the day before the trial, and the record further shows that he endorsed it "Seen and Objected to" (R. 7).

On June 28, 1951, the contempt proceedings were tried at length, seven witnesses being introduced by the Commonwealth and two by the petitioners. The petitioners were found guilty, and the union fined $7,500.00, its president was fined $1,000.00, and given a jail sentence of ten days, its secretary was fined $750.00 and given a five day jail sentence. The evidence introduced by the union showed that, without considering initiation fees, the union had an annual income of at least $28,000.00 (R. 82-83).

On June 19, 1951, the union had instituted a civil action

before a duly constituted Three Judge United States District Court against the Honorable John S. Battle, Governor of Virginia, in which it was asked that the Governor be enjoined from enforcing the Virginia Public Utilities Labor Act. The Commonwealth of Virginia was not a party to this suit, and it was not argued until July 20, 1951, and was not decided until August 3, 1951, both dates being long after the contempt proceedings had been completed. In this proceeding, the defendant's motion to dismiss was granted, not only on the ground that the plaintiffs had an adequate remedy in the state court, but also on the further ground that the union was seeking an injunction when it and its officers had been adjudged guilty of criminal contempt in violating the state court's injunction. 101 Fed. Sup. 650, 654.

On November 26, 1951, this Court affirmed the judgment of the Three Judge District Court, although some of the same arguments in written form now advanced in this petition were there advanced. *Local 333B* v. *Battle*, 342 U. S. 880.

On November 27, 1951, petitioners appealed to the Supreme Court of Appeals of Virginia *in the contempt action only*. They have never appealed in the equity injunction suit, and their period of appeal there has long ago elapsed. The Supreme Court of Appeals of Virginia affirmed the action of the Court of Law and Chancery of the City of Norfolk in punishing the petitioners for violation of the injunction on the ground that the constitutionality of the act under which the injunction was awarded was subject to attack in the proceedings in which the injunction was granted, and not in collateral contempt proceedings. There was no discussion of any claimed unconstitutionality of the Virginia Act because the court followed *Howat* v. *Kansas*, *supra*, nor of any claimed lack of jurisdiction on the part

of the Court of Law and Chancery, because this point was not raised in either of the state courts (R. 79-90).*

VI.

ARGUMENT

The writ should not be granted for the reason (1) petitioners had ample opportunity to assert their rights in the proper forum; (2) decision of the Supreme Court of Appeals of Virginia is in harmony with the decisions of this Court; (3) the injunction issued by the Court of Law and Chancery of the City of Norfolk may not be collaterally attacked (a) because that Court had jurisdiction to issue the injunction; (b) under the rule in the federal courts even if it did not have jurisdiction, the collateral attack could not be made.

(1) When the suit for injunction was filed in the Court of Law and Chancery of the City of Norfolk, the petitioners were represented by able counsel, yet at no time during these equity proceedings, did he question either the constitutionality of the Virginia Public Utilities Labor Act, nor the jurisdiction of the court to award the injunction. On the contrary, he contented himself in contending that the ferry corporation was not a utility under the provisions of the Act itself (Va. Code 1950, Title 40-93), thus inferentially at least granting both constitutionality and jurisdiction (R. 80-87).

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*With reference to the footnote (page 7 Peto.) which asserts that the Supreme Court of Appeals of Virginia was in error in stating that the plaintiffs had failed to move to vacate the injunction until they were before the court to answer the charge of violating it, we observe that the petitioners filed their answer in the contempt proceedings late in the afternoon of June 27, 1951, and stood before the bar of the Court of Law and Chancery at 10 A. M. on June 28, 1951, to answer the charge of having violated the injunction. It is submitted that the statement of the Virginia court was substantially correct (R. 7-8).

In the contempt proceedings, counsel for petitioners admitted in so many words that he had not raised the question of constitutionality in the equity proceedings, and intimated that he had refrained deliberately from doing this (Tr. 23). He requested the court to hear him in the contempt proceedings on this question. This the court refused to do, but reiterated its willingness to hear him on this point in the equity proceedings "at any time that you wish to give proper notice" (R. 61). The petitioners had full opportunity even after the injunction was awarded, and before it was violated to move to dissolve the injunction, and to then raise the question of constitutionality of the Virginia Act (R. 87). Indeed, they were invited by the lower court so to do (R. 61), but they obstinately refused. It is submitted that this Court will not look with favor upon petitioners' determination to test a law by violation rather than by the orderly process of appeal; nor will it look with unsympathetic eyes upon the efforts of a court to uphold the dignity of its order by insisting that the application for a reversal of that order be made in the proper forum.

(2) It must be apparent that both state courts decided this case in complete reliance upon the holding of this Court in *Howat* v. *Kansas*, 258 U. S. 181, wherein this Court said:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the validity of the law and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are

to be respected, and disobedience of them is contempt of its lawful authority, to be punished. Gompers v. Bucks Stove and Range Co., 221 U. S. 418, 450; Toy Toy v. Hopkins, 212 U. S. 542, 548; United States v. Shipp, 203 U. S. 563, 567."

It is difficult to see any distinction between *Howat* v. *Kansas, supra,* and the instant case. Petitioners argue that in the *Howat case* there was no National Labor Relations Act protecting the right to strike. Yet this Court, long after the passage of the National Labor Relations Act reaffirmed the doctrine of the *Howat case* in *United States* v. *Mineworkers,* 330 U. S. 258, 293; and in the mineworkers case it was claimed that the Norris-LaGuardia Act deprived the District Court of jurisdiction. While this Court in the *Mineworkers case* did rely in part on *U. S.* v. *Shipp,* 203 U. S. 563, it relied also on the *Howat case* (330 U. S. 293).

We maintain that even if the Virginia Public Utilities Labor Act were in conflict with the federal law in some respect, and even if the state courts erred in enforcing it, their action may not, under *Howat* v. *Kansas, supra,* be collaterally attacked.

(3) The Court of Law and Chancery of the City of Norfolk had jurisdiction to issue the injunction. It is a court of "general jurisdiction with equity powers", including, of course, the right to issue injunctions in all classes of litigation, including labor disputes (Va. Code 1950 Title 17—Sec. 186, and 123). It had potential jurisdiction at all times, and this jurisdiction did not depend on the constitutionality of the Virginia Public Utilities Labor Act, but was derived from the Acts just mentioned above (*Howat* v. *Kansas,* 258 U. S. 181, 190).

> "Jurisdiction of the subject matter has reference to the nature of the cause of action or the relief sought. It does not mean simply jurisdiction of the particular case then occupying the attention of the court but jurisdiction of the class of cases to which the particular case belongs and over which the authority of the court extends." (Freeman on Judgments 5th Ed. par. 337 (1925)).

The lower state court was not in the position of a court which attempts to handle a class of litigation over which another system of courts had exclusive jurisdiction, such as was the situation in the cases of *Kalb* v. *Feuerstein*, 308 U. S. 433 and *Vallely* v. *Northern Fire Ins. Co.*, 254 U. S. 348, both relied upon by petitioners. In the former case, a state court insisted on foreclosing a farmer's property despite the fact that the Bankruptcy Court had exclusive jurisdiction under the Frazier-Lemke Act. This Court held that because the Constitution grants exclusive power to regulate bankruptcy to Federal Courts, that the state court was without jurisdiction to act. In the latter case a bankruptcy court insisted on administering the estate of an insurance company, despite the direct provisions of Sec. 4b exempting insurance companies from adjudication as bankrupts. But these are direct usurpations of power of a class of cases over which the respective courts have no control.

Neither the National Labor Relations Act nor the Labor Management Relations Act of 1947 (29 U. S. C. 141, et seq.) lays down in specific terms a definite line of demarcation between state and federal court jurisdiction over labor matters.

The Virginia Public Utilities Labor Act has never been declared unconstitutional. While it resembles the Michigan and Wisconsin Acts in some respects, in others it is vastly different, containing neither the objectionable compulsory

arbitration provision of the Wisconsin Act, nor the equally objectionable majority strike vote provision of the Michigan Act. Conceivably some of its provisions may be held to be in conflict with the federal law, but certainly not the whole Act. The state courts had every right to consider the Virginia Act constitutional until declared otherwise. The injunction required general compliance with the Act, not with any specific provision of it (R. 80).

It is submitted that this Court did not intend in the two cases cited by petitioners, i.e. *Automobile Workers* v. *O'Brien*, 339 U. S. 454, and *Bus Employees* v. *Wisconsin*, 340 U. S. 383, to completely strip the state courts of jurisdiction in labor disputes, such as the one in the instant case. In these holdings it was intended only that wherever conflict arose between state and federal legislation, the latter should prevail. Indeed this Court has itself held that in certain instances where no conflict existed between the state and federal labor laws, that the former should be enforced. *Algoma Plywood and Veneer Co.* v. *U. S. Employment Relations Board*, 336 U. S. 245; *International Union, United Auto Workers* v. *Wisconsin Employment Relations Board*, 324 U. S. 884; *Lincoln Fed. L. U.* v. *Northwestern I. & M. Co.*, 335 U. S. 525; and *Day-Brite Lighting* v. *Missouri*, decided Mar. 3, 1952, 72 Sup. Ct. Rep. 405, 96 L. ed. 343, Nor do the cases cited at the top of page 9 of the petition support the statement that this Court has deprived the state courts of jurisdiction over peaceful strikes.

(4) The rule in the federal courts is that one who is a party to the suit which issues an order may not attack the order in a collateral proceeding, even though the court which issued the order had no jurisdiction to do so. *Nye* v. *U. S.* (C. C. A. 4), 137 F. (2d) 73, 77—appeal 313 U. S. 33; *Chicot County Drainage District* v. *Baxter State Bank*,

308 U. S. 371; *Des Moines Navigation Co.* v. *Iowa Homestead Co.*, 123 U. S. 552, 557; *Evers* v. *Watson*, 156 U. S. 527. These cases proceed upon the theory that the lower federal courts are all courts of limited jurisdiction, i.e. with only that jurisdiction which Congress has prescribed, but nevertheless they are courts with authority, when the parties are properly before them to determine whether or not they have jurisdiction. It is not perceived why the same rule should not be applied to state courts of general jurisdiction. Even where the proceedings themselves on their face show that the lower court had no jurisdiction, and where there is no jurisdictional fact before the court to be decided, the order of the court may not be attacked collaterally. *Dowell* v. *Applegate*, 152 U. S. 327. We do not agree that the court below, by merely stating that the general rule is that where a court has jurisdiction, its judgments may not be attacked collaterally, conceded that the validity of the injunction could have been raised in the contempt proceedings (Peto. p. 9). In the court below, the jurisdiction of the Court of Law and Chancery was never questioned.

(5) The statement in the petition that this Court implicitly accepted the view that the unconstitutionality of a state anti-strike injunction may be raised in contempt proceedings in its decision in *United Gas Coke & Chemical Workers* v. *Wisconsin*, 340 U. S. 383 (Peto. p. 9), is erroneous. That case is not in point. The proceeding was one of civil contempt in accordance with the Wisconsin statute (the instant action is a criminal contempt) and it is well settled that judgments in civil contempt actions may be collaterally attacked (330 U. S. 295). *Wisconsin Employment Rel. Bd.* v. *Allis Chalmers*, 25 N. W. (2d) 425, 429. In addition, an inspection of the record in the *United Gas Workers case*, record number 438, shows (1) that the injunction and con-

tempt proceedings were in one action, and (2) that Local No. 18 raised the question of constitutionality of the state statute at the very beginning of the proceedings in the action in which the injunction was granted (R. 21—case No. 438).

(6) No reason has ever been advanced in this case as to why the union should not have waited the brief period before striking which would have allowed it to comply with state law. Time was not of the essence here.

(7) While the Commonwealth of Virginia maintains that the decision below was correct, it is proper also to call to this Court's attention that the Virginia Public Utilities Labor Act has been repealed (Acts of Assembly 1952—Virginia, Chap. 697; 1952 Cum. Supp. of Va. Code page 300). The question, therefore, of conflict of law or decisions is moot, and a decision of the questions posed in this case will affect only the litigants. The petitioners have received one appellate review. This Court has held that jurisdiction was not conferred on it merely to give the defeated party another hearing. *Magnum* v. *Coty*, 262 U. S. 159, 163. That is all that would be accomplished in this case if the writ were granted.

VII.

CONCLUSION

We respectfully submit that the writ should not be granted for the following reasons:

(1) The Court has no jurisdiction because (a) the case below turned on an adequate non-federal question, (b) the specific question of claimed lack of jurisdiction now relied upon, was never advanced in the lower courts, (c) no federal question was properly stated in the lower courts. (2) Even if the Virginia Labor Act be unconstitutional, the judgment

of the state court enforcing it may not be collaterally attacked. (3) The Court of Law and Chancery of the City of Norfolk had jurisdiction to issue the injunction. (4) Even if it lacked this jurisdiction, under the federal rule its judgments may not be collaterally assailed; and (5) There is no important question of conflict of laws at issue.

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